IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4121 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

U.A. PATHN

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Appearance:

MR PRANAV G DESAI for Petitioner

RULE SERVED for Respondent No. 1

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CORAM : MR.JUSTICE K.M.MEHTA

Date of decision: 03/05/2001

CAV JUDGEMENT

1. Gujarat State Road Tansport Corporation, hereinafter as referred as "petitioner Corporation", has filed this petition, challenging the judgement and award dated 12-9-1988 passed by the Presiding Officer, Labour

Court, Nadiad in Reference (L.C.N.) No.203/1985. The petitioner Corporation has terminated the services of respondent employee. The Labour Court substituted the said punishment and granted reinstatement to the respondent employee to his original post without backwages.

2. The relevant facts arising out of this petition are as under:

2.1. U.A.Pathan, respondent, was working as a bus conductor of the petitioner-corporation since 1964. It has been stated in the petition that right from 1964 till 1983, he has committed about 44 defaults of not issuing tickets and/or misappropriation of certain amount in this behalf.

3. Present Controversy:

3.1 It has been stated in the petition that the respondent was working as a bus conductor and on 20-3-1984, when the respondent was on duty his bus was checked by the checking party of the petitioner-corporation when it was found that the respondent had not properly issued ticket and also not closed the Way Bill. Therefore, a show-cause notice was issued to the respondent by the petitioner-corporation, looking to his past as well as present controversy record. Thereafter, a departmental inquiry was held against the respondent by the petitioner-corporation and in the departmental enquiry the respondent was found guilty. Therefore, the service of the respondent was terminated by the petitioner-Corporation.

3.2 Being aggrieved by the decision taken by the petitioner-corporation the respondent raised an industrial dispute under Section 10(1)(c) of the Industrial Disputes Act, 1947 before the Labour Court, Nadiad. The Labour Court, Nadiad was pleased to issue notice to the petitioner-corporation and the petitioner-corporation appeared in the said Reference and filed its written statement at Exh. 6 along with show-cause notice, enquiry proceedings and default card.

3.3 Before the Labour Court, the petitioner-corporation contended that in the past there were 44 defaults relating to misappropriation alleged against the respondent and due to his past record and considering all the facts, the departmental authority has rightly taken the view to dismiss the respondent and, therefore, the Reference made by the respondent is

required to be dismissed with costs.

3.4 After hearing both the parties, the Labour Court allowed the Reference in part and ordered that the respondent should be reinstated to his original post with continuity of service without any backwages.

3.5 Being aggrieved and dissatisfied with the order and award passed by the Labour Court, Nadiad in Reference (LCN) No.203/1985, the present petition has been filed on 12-6-1989 by the petitioner-corporation. This Court was pleased to issue notice on 26-6-1989. It may also be noted that on 1-5-1991, in a similar case (SCA No.3100/1990), when it was heard, this Court (Coram: S.B.Majmudar and V.H.Bhairavia, J.J.) was pleased to pass the following order:

"We have heard the learned advocate of parties. So far as proper security is concerned, it is directed that Rs.23,000/- which are computed to be payable to the respondent pursuant to the impugned award in Sec.33-C(2) application shall be deposited by the petitioner before the Labour Court, Bhavnagar within six weeks from today. The respondent will be permitted to withdraw the same on his filing usual undertaking before the Labour Court that in case ultimately any amount out of withdrawn amount is held to be refundable to the petitioner in these proceedings, the respondent will have no objection in getting it adjusted against the retirement benefits including provident fund, gratuity etc. Withdrawal will be permitted only on furnishing such written undertaking. Liberty reserved to the respondent to move this Court for further appropriate orders in case his grievance is that current salary which is paid to him is not according to the award. As and when such application is filed, it will be decided in accordance with law."

4. When the matter was heard, Mr.Pranav G. Desai, learned Counsel for the petitioner has submitted that the respondent was a bus conductor and he was one of the employees of the petitioner-corporation, who collect bus-fare from passengers - a major revenue on behalf of the petitioner-corporation. He is dealing with the public money and the post of the conductor is post of trust and confidence and as the respondent has been found in the habit of misappropriating the petitioner-corporation's revenue, he should not have been ordered to be reinstated in service.

5. He has further submitted that the Labour Court

should have seen that lenient punishment in the past had not resulted into improvement on the part of the respondent and as such power under Section 11A of the Industrial Dispute Act ought not have been invoked.

6. He has further submitted that looking to the serious charges of misappropriation levelled and proved against the respondent, the punishment imposed is appropriate. He has further submitted that the burden is on the respondent to prove that the case deserves sympathy invoking power under Section 11A of the Act, is not discharged. The relevant factors in exercise of the said power are not at all considered.

7. He has also relied upon the Hon'ble Supreme Court judgement in the case of "Janatha Bazar (South Kanara Central Co-operative Wholesale Stores Ltd.) Etc., Vs. Secretary, Sahakari Noukarara Sangh, Etc." reported in AIR Supreme Court Weekly 3439 and also upon the judgement of this Court in the case of "G.S.R.T.C. Vs. Rameshbhai D. Patel" in Special Civil Application No.3244 of 1992 decided on 8-11-2000 by this Court (Coram: K.M.Mehta,J.).

8. In my view, looking to the facts and circumstances of the case, the Labour Court has erred in allowing the Reference of the respondent. In my view the Labour Court should have seen that lenient punishments in the past had not resulted into improvement on the part of the respondent and in view of the same he should not be given any fresh opportunity to improve upon himself. In my view the Labour Court has erred in reinstating the respondent with continuity of service.

9. The Labour Court has incorrectly interfered with the order of punishment which is passed after coming to the conclusion that the departmental enquiry held against the respondent was in consonance with the rules of natural justice. In my view, therefore, the Labour Court has not properly exercised the power under Section 11(A) of the Industrial Disputes Act, 1947 and, therefore, the order and award of the Labour Court dated 12-9-1988 in Reference (L.C.N.) No.203/85 is hereby quashed and set aside. In this case, when the matter was admitted by this Court, no interim relief of reinstatement has been granted from 1988 till today. Therefore, if the respondent employee has been working in the corporation and the petitioner-corporation has paid him for that, the amount may not be disturbed. However, from the date of receipt of the writ of this order, the respondent workman is liable to be terminated from service as I have set

aside the order and award of the Labour Court in this behalf. However, this order is subject to order dated 1-5-1991 passed by Division Bench in the matter.

10. With the aforesaid observations and directions, the petition is allowed. Rule is made absolute to the above extent. No order as to costs.

03-05-2001 (K. M. Mehta, J.)